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# VIRGINIA LAW REGISTER

R. T. W. DUKE, JR., *Editor.*

HOMER RICHEY AND MINOR BRONAUGH, *Associate Editors.*

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It is an excellent outcome of the general arbitration treaties which the United States has made with Great Britain and France that arrangements have been completed for setting up permanent joint commissions to adjust immediately any question which may arise during the war as to belligerent and neutral rights. Treaties to this end are about to be signed between the respective powers, and another great advance in the respect for neutral privileges is thereby signalled. In former European struggles there have been very vexed questions between America and the belligerent countries, which led, after much friction and long after the war was over, to the appointment of mixed commissions: and there is actually in existence at this moment a board of judicial arbitrators who are considering a number of prize claims of English and American citizens that arose out of the Napoleonic and American wars at the beginning of the last century. This friction and dilatoriness will be avoided by the new treaties, which will provide a tribunal able to adjust as they arise the conflicting claims of belligerent and neutral States, of captors and neutral subjects, and will render impossible the repetition of such crises as were raised over the Trent and the Alabama affairs fifty years ago. In addition to the signing of the treaties, an agreement has been entered into upon two matters of difficulty in the practice of neutrality. It is understood that England agrees that her merchant ships shall not enter American ports with any armament, and, on the other side, that she will not object to the United States acquiring the interned German merchant vessels on condition that the ships will only be used in indisputably neutral trade during the hostilities.

In commenting on this agreement the *London Law Journal* takes the position that to allow the United States to purchase

German merchant vessels now interned in her harbors on condition that they be used only in strictly neutral trade during the hostilities is clearly a waiver of England's legal rights, because she would have under the declaration of London an undoubted right to capture these vessels on the high seas, though they had been legally transferred to the American flag. This view is not in accord with that held by many leading American lawyers and statesmen. Secretary of the Treasury McAdoo maintained before the House Merchant Marine Committee that the United States had the right to buy ships from Germany or any one else so long as it buys those ships for neutral purposes. And this is the view that seems to have been taken by the admiralty courts of both England and America in the cases that have come before them heretofore. If the sale is an absolute bona fide transfer for valuable consideration, free from taints of fraud, such as the seller retaining an interest in or control over the vessel, or coupled with a right to have the vessel retransferred after the cessation of hostilities, it cannot be successfully attacked as long as engaged in strictly neutral trade.

In the *Benito Estenger*, 176 U. S. 568, 44 L. Ed. 592, it was said: "Transfers of vessels *flagrante bello* were originally held invalid, but the rule has been modified, and is thus given by Mr. Hall, who, after stating that in France 'their sale is forbidden, and they are declared to be prize in all cases in which they have been transferred to neutrals after the buyers could have knowledge of the outbreak of the war;' says: 'In England and the United States, on the contrary, the right to purchase vessels is in principle admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the opportunities of fraud being great, the circumstances attending a sale are severely scrutinized, and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits, a control over it, a power of revocation, or a right to its restoration at the conclusion of the war.'"

And to the same effect is Mr. Justice Story in his *Notes on the Principles and Practice of Prize Courts* (Pratt's ed.) 63, 2 Wheat App. 30: "In respect to the transfers of enemies'

ships during the war, it is certain that purchases of them by neutrals are not, in general, illegal; but such purchases are liable to great suspicion; and if good proof be not given of their validity by a bill of sale and payment of a reasonable consideration, it will materially impair the validity of a neutral claim; \* \* \* and if after such transfer the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colorable and collusive. \* \* \* Anything tending to continue the interest of the enemy in the ship vitiates a contract of this description altogether."

The rule was stated by Judge Cadwalader of the Eastern District of Pennsylvania thus: "The rule of decision in some countries has been that, as to a vessel, no change of ownership during hostilities can be regarded in a prize court. In the United States, as in England, the strictness of this rule is not observed. But no such change of property is recognized where the disposition and control of a vessel continue in the former agent of her former hostile proprietors; more especially when, as in this case, he is a person whose relations of residence are hostile." *The Island Belle*, 13 Fed. Cases 168.

And in the English case, the *Sechs Geschwistern*, 4 C. Rob. 100, Sir William Scott says: "This is the case of a ship, asserted to have been purchased of the enemy; a liberty which this country has not denied to neutral merchants, though by the regulation of France, it is entirely forbidden. The rule which this country has been content to apply is that property so transferred must be bona fide and absolutely transferred; that there must be a sale divesting the enemy of all further interest in it; and that anything tending to continue his interest, vitiates a contract of this description altogether."

It would seem from these cases that the out and out purchase of a belligerent's vessels to be used in strictly neutral trade would be reasonably safe, while the mere temporary transfer of foreign vessels to the American flag would be extremely questionable.

M. B.

Through the courtesy of Mr. W. B. Watts, secretary and treasurer of the Virginia Board of Law Examiners, we have received a copy of the rules adopted by the **Changes in Rules Board**, on July 1, 1914, setting forth the requirements and procedure for admission to the Bar in Virginia. They are as follows:

1. Until otherwise provided, examinations will be held as follows:

At the capitol in Richmond on the second Wednesday in December, and at Roanoke on the fourth Wednesday in June, in each year.

2. Every person over twenty-one years of age applying for a license to practice law must first have obtained from the Circuit Court for the county, or the Corporation Court of the city, wherein he resides, a certificate that he is a person of honest demeanor, is over the age of twenty-one years, and has resided in this State the preceding six months.

The application for such certificate shall be in writing, addressed to the court, specifying the day of the month when the motion therefor to the court will be made, and be accompanied by the written recommendation of two members of the bar of his judicial circuit, who are practicing attorneys in the Supreme Court of Appeals, speaking of their personal knowledge, that he is of good moral character and a proper person to be licensed to practice law. Such application and recommendation shall be filed with the clerk of such Circuit or Corporation Court ten days before the day on which the court will be asked to grant the said certificate, and a copy thereof forthwith delivered by the clerk to the judge of the court.

3. Every person over nineteen and under twenty-one years of age applying for a license to practice law must first have obtained from the Circuit Court for the county, or the Corporation Court of the city, wherein he resides, a certificate that he is a person of honest demeanor; that he is over nineteen years of age; that he has studied law for a period of two years in a law school of this State, or in the office of a practicing attorney of this State (as the case may be); that he will attain the age of twenty-one years on the ——— day of ———, 19—, (giv-

ing the exact date); and that he has resided in this State the preceding six months; said certificate to be obtained in the manner prescribed for persons over twenty-one years of age.

4. Every person who desires to be examined, either on all the subjects or any section as hereinafter provided, shall (except as modified by Rule 5) file with the secretary of this board a certified copy of his application, of the recommendations of the members of the bar, and of the certificate of his Circuit or Corporation Court, accompanied by a fee of \$10.00 for each examination, in certified check, money order or cash, and should the aggregate of the fees prove excessive, such excess shall be returned to the applicants as provided by law. Said papers are to be filed and deposit made at least five days prior to the day of examination, and should be addressed to M. B. Watts, Secretary, etc., Richmond, Va., to whom all correspondence also should be addressed. *The papers filed must show upon their face that the order of court granting the certificate was made on the day named in the application, or that the application was docketed on that day.* APPLICANTS ARE URGED AND EXPECTED TO SEE PERSONALLY THAT THEIR APPLICATIONS, THE COURT ORDER THEREON AND OTHER PAPERS CONFORM STRICTLY TO THESE RULES.

5. Any person failing to pass an examination, or who has passed on only a part of the schedule of examinations, may again apply in writing, addressed to the secretary of the board, setting forth that he has diligently pursued the study of the law since the former examination, stating the sections of the examination on which he has already passed, and enclosing the fee of \$10.00.

6. Any applicant failing to appear shall be charged with his proportionate part of the cost of the examination for which he made application, but may stand any subsequent examination within two years from the date of his original application on his original papers; provided he shall give reason satisfactory to the board for his failure to appear.

7. Applicants must provide themselves with fountain pens or indelible pencils for use in the examination room.

8. The questions and answers of every examination will be in writing, but applicants shall be liable also to an oral examination, in the discretion of the board.

9. The board, in grading papers, will take into consideration not only the legal learning of the applicant, but his general qualification to practice in the courts of this State as an attorney and counsellor at law.

10. The examination shall last two days, and each day shall be divided into two sections. The topics for examination shall be as named below, and shall be distributed among the examination sections as follows (but the board does not consider itself committed to asking questions on all the subjects named under any section):

#### FIRST DAY.

Sec. 1. Legal Ethics, Evidence, Criminal Law; Pleading and Practice (at common law, in equity, criminal and statutory)

Sec. 2. Agency; Contracts; Domestic Relations; Negotiable Paper; Sales; Torts.

#### SECOND DAY.

Sec. 3. Conflict of Laws; Equity Jurisprudence; Partnership; Real Property; Wills and Administration.

Sec. 4. Bailments; Carriers; Constitutional Law; Corporation Commission; Corporations; Insurance.

(Questions on the Virginia Code and the general principles of the common law may be asked under any section.)

11. Any candidate making the passing mark (averaging the four groups together) shall be passed upon the examination as a whole; and one not passing the examination as a whole, but passing on one or more of above groups, shall be entitled to credit on the group or groups so passed on future examinations.

12. A candidate may be permitted to stand upon, and pass if he may, any one or more of the four groups separately.

13. Every applicant will be required to affix to his examination and subscribe with his own name the following pledge: "I hereby certify that I have neither received nor given aid or assistance in any manner during this examination."

In case any applicant shall violate this pledge he will be denied a recommendation for admission to the bar.

The change in the new rules from those previously in force are: (1) The date of the examination to be held in Richmond is changed from the first Wednesday in November to the second Wednesday in December; (2) the permitting of the re-examination of an applicant, who has failed, without additional fee is abolished, and such applicants are required to pay a \$10 fee; (3) the period of holding the examination is changed from one to two days; divided into four sections; (4) to the list of subjects upon which the applicant is to be examined is added Conflict of Laws and Carriers; and (5) credit is given for the passage of a part of the subjects of examination to an applicant who fails to pass all of the subjects required.

To the subjects upon which the applicant is to be examined is added Carriers. The applicant has in the past been required to stand an examination in Bailments, which we may, in an elementary sense, consider as embracing the subject of Carriers; but no question has ever been asked concerning Carriers. This is a subject of much litigation and a prospective attorney should be examined thereon. While Conflict of Laws is not included in the rules of March 14, 1910, a number of questions have been asked on the subject. It is to be said to the credit of the Board of Examiners that the questions that have been heretofore asked have been unusually fair and asked upon subjects properly required of applicants and which are taught in university courses. Such questions lead to a thorough knowledge of the applicant's efficiency.

The extension of the time covered by the examination from one to two days is certainly necessary and proper. The one day period did not allow the Board sufficient time in which to make a thorough examination of the applicant and was a serious handicap to an applicant who was not a rapid worker. The examination is at the present day more than a form or a farce, as it was a quarter of a century ago, if the tales of old lawyers are to be believed; and it is taken seriously. It should not be unnecessarily difficult, but it should be thorough. Lawyers are needed; therefore, the examination should not serve merely to exclude applicants from the bar; but should enable the Board to give certificates to as many efficient applicants as possible.



The Board, therefore, has properly extended the time of the examination to a period covering at least two days.

The provision for giving credit for the part of the subjects passed by an applicant unsuccessful in his entire examination, in its working out, will tend for both good and evil—for good, in that it will permit the Board to aid an applicant who has been found efficient in all but one or a few subjects to make up his deficiency more easily and quickly. Such applicants should certainly, under the ordinary circumstances, succeed at the next subsequent examination. A few years ago questions on Bankruptcy were asked for the first time. A number of applicants had not studied the subject and supposedly could not answer the questions. This is an instance in which it would have been perfectly fair to have passed these men on all other subjects successfully studied, if it were necessary to withhold their certificates from them for failure to pass the entire examination. The evil to which this rule is subject consists in this, that it will aid the inefficient applicant by piecemeal to pass the different subjects required; for practically every applicant who will come before the Board will be able to stand an examination in at least one or more subjects and yet may never at any one period in his life be versed in the entire subjects. This is a very proper rule for the Board to exercise a full discretion in enforcing.

T. B. B.

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With a view to obtaining the coöperation and assistance of the lawyers of Virginia in the work of revising the Code, Mr. John W. Williams, the chief clerk of the Code Revision Commission, makes the following announcement:

**Code Revision—  
Duty of the Bar.**

“To the Members of the Bar of Virginia:

“The commissioners to revise the Code are desirous of any and all information which will aid in making the work of revision complete, and I am directed by them to invite you to make any suggestion of contradiction, duplication or imperfection in the statutes, or any other suggestions which, from your experience and observation, you may deem of service to the revisers.

"Kindly make your suggestion upon each section or subject on a separate sheet, for the convenient use of the revisers.

"Please address your reply to me, box 406, Richmond, Va

"Very truly,  
"JOHN W. WILLIAMS,  
"Chief Clerk."

This is an appeal that should be heeded by all Virginia lawyers. No one more than the practicing attorney comes more frequently upon the contradictions, duplications, omissions and imperfections existing in our present Code. While it is true that we have a commission composed of some of our foremost lawyers, we must not forget that the work assigned them is monumental, requiring a vast deal of close analytical work and they could not be blamed if they failed unaided to reach perfection in their work. So we urge upon the lawyers of the state the performance of this duty. That they recognize the opportunity and appreciate the duty, however, is borne out by the adoption of a resolution at the last meeting of the State Bar Association calling upon all members to contribute their share to the attainment of a perfect Code for Virginia.

M. B.

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In time of war, men of all vocations should, and generally do, give of their substance and ability, but of all the varied lines of human endeavor, it seems that those **Lawyers' Patriotism.** engaged in the pursuit of the law should be among the first to answer the call of their country in her hour of need. They, more than any one set of men, are in touch with all others in their daily life and work, and as a rule they outnumber those engaged in any other business or profession, in the control and management of our relations with other countries. So, then, they can fully sympathize with and appreciate the efforts of the English attorneys to help their country at this time of need. In furtherance of this desire to contribute their part, the Council of the Law Society, maintaining the patriotic traditions of the legal profession, have offered their hall in Chancery Lane to the British

Red Cross Society for use as a hospital, and have made a contribution of £500 to the Prince of Wales' Fund. They have, in addition, made a number of arrangements affecting articled clerks serving with the forces. They have decided, with the approval of the Master of the Rolls, that the period during which an articled clerk is "engaged in active naval or military service" shall be "counted as part of the service of his articles." The large number of solicitors and articled clerks who served as volunteers in the South African war were, after the campaign was concluded, entertained at dinner by the Council in the Law Society's hall. A still larger number of solicitors and articled clerks are responding to their country's call in the present war.

In commenting on the action of the Law Society the *Law Journal* (London) says:

"The Council feel sure that all members of the profession will be anxious to encourage all their clerks of military age at the present serious crisis to join one or other of the defensive forces of the country.

Many men may be deterred from enlisting by not knowing what their position may be when the war is over. The Council, therefore, suggest to the profession that all members of their staffs enlisting for service during the war should have a guarantee that their situations will be kept open for them when they return.

The profession will, no doubt, also think it right to pay a certain proportion of their clerks' salaries while away, the amount, of course, being governed by the question whether such clerks leave anyone dependent upon them."

M. B.